

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
THOS. SCALZO COMPANY

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent,

PCHB No. 234

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of two civil penalties of \$250.00 each for alleged violations of respondent's open burning regulations, came before two members of the Pollution Control Hearings Board (W. A. Gissberg and Walt Woodward) in a conference room at respondent's Seattle headquarters at 1:30 p.m., February 16, 1973.

Appellant appeared through its attorney, Michael R. Alfieri, respondent through its counsel, Keith D. McGoffin. Richard Reinertsen, Olympia court reporter, recorded the proceedings.

On the basis of testimony heard, exhibits examined and closing

1 arguments of counsel, the Pollution Control Hearings Board prepared
2 Proposed Findings of Fact, Conclusions and Order which were submitted to
3 the appellant and respondent on April 13, 1973. No objections or
4 exceptions to the Proposed Findings, Conclusions and Order having been
5 received, the Pollution Control Hearings Board makes and enters the
6 following

7 FINDINGS OF FACT

8 I.

9 On October 16, 1972, a stagnant air condition caused the State
10 Department of Ecology to order state-wide implementation of a forecast
11 stage in an air pollution episode.

12 II.

13 Section 9.02(b) (2) of respondent's Regulation I, as amended
14 April 12, 1972 by Resolution No. 101, makes it unlawful to allow any
15 outdoor fire during any stage of an air pollution episode.

16 III.

17 At 12:40 p.m., on October 16, 1972 an inspector on respondent's
18 staff observed eight natural vegetation fires smoldering at a highway
19 land-clearing site under control of appellant in the vicinity of
20 Southeast Wax Road and 193rd Avenue Southeast, Kent, King County.
21 The inspector told appellant's project supervisor that it would be
22 satisfactory if the fires were extinguished in two or three hours.

23 IV.

24 At 11:20 a.m. on October 17, 1972, with the State Department of
25 Ecology's forecast stage still in effect, the inspector returned to the
26 site near Southeast Wax Road and 193rd Avenue Southeast and observed

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 virtually no change from the previous day in the eight smoldering fires.

2 V.

3 Notice of Violation No. 5835 was served on appellant, citing
4 Section 9.02 of respondent's Regulation I. In connection therewith,
5 Notice of Civil Penalty No. 508 in the sum of \$250.00 subsequently was
6 served on appellant.

7 VI.

8 On October 17, 1972, at another of appellant's clearing sites at
9 Southeast 231st and 220th Avenue Southeast, Kent, King County, an
10 inspector on respondent's staff observed one smoldering fire and issued
11 Notice of Violation No. 6756, citing Section 9.02 of respondent's
12 Regulation I. In connection therewith, Notice of Civil Penalty No. 509
3 in the sum of \$250.00 subsequently was served on appellant. Civil
14 penalties Nos. 508 and 509 are the subjects of this appeal.

15 VII.

16 The inspector had been near the site at Southeast 231st and
17 220th Avenue Southeast when he made his first visit to appellant's
18 highway project on October 16, 1972, but had not seen any fire,
19 smoldering or otherwise, at that location. However, after his
20 October 16 visit there and prior to his October 17 visit, a bulldozer
21 operator employed by appellant unintentionally ran his vehicle through
22 a natural vegetation pile which had been ignited two weeks earlier.
23 This accident supplied fresh oxygen to coals at the bottom of the
24 apparently dead fire and caused it to smolder on October 17. Workmen
25 employed by appellant extinguished the fire that day.

26 From these Findings of Fact, the Pollution Control Hearings Board
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 comes to these

2 CONCLUSIONS

3 I.

4 Appellant failed to extinguish the eight smoldering fires at the
5 site near Southeast Wax Road and 193rd Avenue Southeast even though
6 given a "two or three hour" grace period on October 16, 1972 to put
7 them out. That the fires still were smoldering on October 17, 1972
8 after having made a twenty-three hour contribution to a widespread and
9 serious air pollution condition, clearly places appellant in violation
10 of Section 9.02(b)(2) of respondent's Regulation I, as amended by
11 Resolution No. 101.

12 II.

13 The \$250.00 civil penalty invoked in connection with the fires at
14 Southeast Wax Road and 193rd Avenue Southeast, although in the maximum
15 allowable amount, nevertheless is reasonable in view of the seriousness
16 of the violation.

17 III.

18 As to the violation cited at Southeast 231st and 220th Avenue
19 Southeast, it should be regarded for what it was--an accidental
20 re-ignition of an old fire which was promptly extinguished. While the
21 citation was well within the inspector's area of responsibility, a
22 reasonable view of all the facts does not sustain a violation for which
23 a civil penalty should be exacted.

24 THEREFORE, the Pollution Control Hearing Board issues this

25 ORDER

26 The appeal to Civil Penalty No. 508 is denied and respondent's

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 civil penalty is affirmed. The appeal to Civil Penalty No. 509 is
2 sustained and respondent's civil penalty is stricken.

3 DONE this 5th day of June, 1973.

4 POLLUTION CONTROL HEARINGS BOARD

5 Walt Woodward
6 WALT WOODWARD, Chairman

7 W. A. Gissberg
8 W. A. GISSBERG, Member

9
10 James T. Sheehy
11 JAMES T. SHEEHY, Member

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER